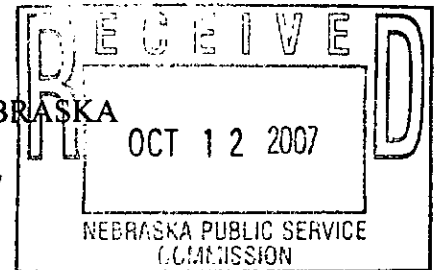


BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

In the Matter of the Commission on its own )  
motion, to investigate jurisdictional )  
issues pertaining to construction and )  
operation of a natural gas pipeline within )  
the State of Nebraska by Nebraska )  
Resources Company, LLC, or any other )  
entity. )

Docket No. NG-0051/  
PI-130



**POST-HEARING BRIEF OF SOURCEGAS DISTRIBUTION LLC**

**I. Introduction**

SourceGas Distribution LLC ("SourceGas") provides natural gas service at retail to approximately 94,000 customers located in the western two-thirds of Nebraska. SourceGas submitted Comments in this docket on September 10, 2007, was granted status as a formal intervenor on September 18, 2007, and submitted testimony during the Commission's hearing on September 25, 2007. SourceGas submits this brief to summarize its position concerning the issues in this docket.

**II. Discussion**

On July 16, 2007, the Commission received a letter from attorneys representing Nebraska Resources Company, LLC ("NRC"). That letter informed the Commission that NRC intends to seek a certificate of convenience from the Commission to operate as a "jurisdictional utility" a new natural gas pipeline wholly within the State of Nebraska that would deliver natural gas to local distribution companies and other high-volume potential customers. The NRC letter posed three questions to the Commission. The Commission issued an order on July 24, 2007 seeking public comment on the three questions posed by NRC and a fourth question posed by the Commission itself. SourceGas addressed the four questions in its Comments dated September 10, 2007.

As stated during its testimony at the September 25 hearing, SourceGas is not opposed to the NRC pipeline project. However, as noted in its Comments, SourceGas is concerned by the dearth of facts available to the Commission to address the questions posed by NRC and in the Commission's July 24, 2007 order. These procedural concerns have been mitigated somewhat by the Commission's Pre-Hearing Conference Order of September 17, 2007, which states, in relevant part, that "issues of legal interpretation regarding the jurisdiction of the Commission

will be made based upon an assumed set of facts regarding a potential pipeline project. No order in this docket will address the merits of any future pipeline project or application which may be filed with the Commission."

The first question on which the Commission seeks comment from interested parties is whether the definition of "high-volume ratepayer" in Neb. Rev. Stat. § 66-1802(7) includes local distribution companies with volumetric demand in excess of 500 therms per day. SourceGas stated in its Comments that it does not believe the Act's definition of a high-volume ratepayer applies to a local distribution company taking service from the proposed NRC pipeline. However, it is the position of SourceGas that any order issued in this docket or with respect to a subsequent application by NRC must state clearly that any local distribution company taking service from the NRC pipeline will remain subject to the Commission's rate regulation and, further, there cannot be service directly from the NRC pipeline to any customer of a local distribution company; that is, no bypass of end use customers. The remainder of this brief will address the focus of SourceGas' concerns; namely, Nebraska's double-piping prohibition and the nature and extent of the Commission's jurisdiction over the proposed NRC pipeline.

**A. The Commission must apply and enforce the double-piping prohibition of Neb. Rev. Stat. § 66-1852.**

Section 66-1852(1) of the State Natural Gas Regulation Act ("Act") makes it abundantly clear that "no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure...". This prohibition is a cornerstone of the Act and is based on a sound legislative policy to avoid wasteful and duplicative utility infrastructure. Section 66-1852 precludes NRC, or any other company, from installing any natural gas pipelines or other infrastructure into an area where there is existing local distribution company infrastructure or service. Despite suggestions to the contrary by NRC, the Supreme Court has left to state regulation "direct sales for consumptive use", *Panhandle Eastern Pipeline Co. v. Michigan Public Service Commission*, 341 U.S. 329, 334 (1951), and the Commission's enforcement of the Act's double-piping prohibition would not be pre-empted by the federal Natural Gas Act. Consistent with the double-piping prohibition, SourceGas submits that any certificate of convenience issued by the Commission for the proposed NRC pipeline must be conditioned on an agreement by NRC that it will not install

duplicative pipe or other natural gas infrastructure to any end users, including any high-volume customers served by a local distribution company.

**B. The proposed NRC pipeline, located wholly within Nebraska and serving only Nebraska customers, should be subject, wholly and not in part, to the Commission's jurisdiction.**

As SourceGas explained in its Comments, the question before the Commission is whether NRC is a "jurisdictional utility" within the meaning of the Act's certificate of convenience provision, § 66-1853(1). SourceGas submits that the answer to this question is an unequivocal "yes", and NRC would be a "jurisdictional utility" within the meaning of § 66-1853(1). First, under the Act's definition of "jurisdictional utility", § 66-1802(11), NRC is a "natural gas public utility" because it is a "company" that proposes to operate "equipment" to convey natural gas in Nebraska. Second, NRC is not excluded from this definition as an "interstate pipeline" because, as it acknowledges, the proposed pipeline would be constructed "wholly within the State of Nebraska" and would be subject to the Natural Gas Act's so-called Hinshaw exemption from regulation as an interstate pipeline, 15 U.S.C. § 717(c). Third, NRC is not exempt from the definition of "jurisdictional utility" because its proposed operations in Nebraska do not meet the three conditions for exemption under § 66-1803 of the Act.

As stated during its testimony before the Commission and in its Comments, SourceGas is concerned that NRC may be hedging its bets by submitting to this Commission's jurisdiction for certain purposes, but not for others. During the September 25 hearing, NRC described the "Hinshaw exemption". SourceGas emphasized in its testimony at the hearing that an intrastate pipeline either meets the Hinshaw criteria or it does not. Indeed, the exemption itself explicitly states that once an intrastate pipeline is determined to meet the criteria of the Hinshaw exemption, the matters exempted "are declared to be matters primarily of local concern and subject to regulation by the several States." 15 U.S.C. § 717(c). SourceGas submits that the Commission's authority over local distribution companies, which is extensive, and its more limited purview regarding "high-volume" ratepayers, is sufficient to meet the Natural Gas Act's requirements for the Hinshaw exemption. Furthermore, the exception cited by NRC under 18 C.F.R. § 284.224 applies only to a Hinshaw pipeline that exports locally produced natural gas to an interstate pipeline, a situation clearly inapposite to the proposal before this Commission. Therefore, this Commission should declare, under its assumed set of facts, that it has jurisdiction,

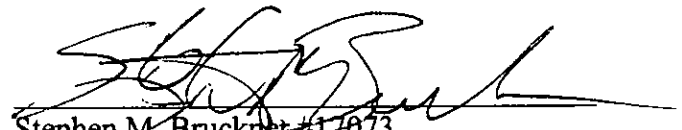
wholly and not partially, over the proposed NRC pipeline, or should require NRC to submit, *in toto*, to such jurisdiction, as a condition of granting a certificate of convenience. Once it does so, its assertion of "regulatory jurisdiction over rates and service" of the proposed pipeline constitutes "conclusive evidence of such regulatory power or jurisdiction. Id.

Dated this 12<sup>th</sup> day of October, 2007.

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CERTIFICATE OF SERVICE

On this 12<sup>th</sup> day of October, 2007, a true and correct copy of the foregoing Post-Hearing Brief of SourceGas Distribution LLC was sent by U.S. Post Office mail to:

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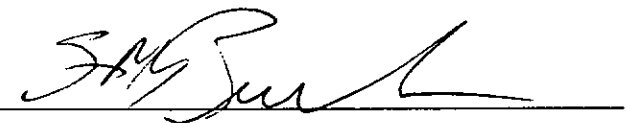
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